

REMARKS

Initially, Applicant expresses appreciation to the Examiner and the Examiner's Supervisor for the courtesies extended during the recent in person interview conducted with Applicant's representative on March 15, 2009. The amendments and remarks presented by this paper are consistent with the proposals and remarks presented during the interview and which generally appeared, during the interview, to distinguish the claims from the cited references and to overcome all of the rejections of record.

In the Non-Final Office Action, mailed September 15, 2009, all of the previously presented claims 1-8 and 10-19 were rejected.¹ By this paper, claims 1, 6, 8, 10 and 14 have been amended, claim 5 has been cancelled and new claims 20-26 have been added, such that claims 1-4, 6-8 and 10-26 remain pending, of which claims 1, 10 and 14 are the independent claims at issue. Support for the claim amendments is found throughout the Application, including Figures 2 and 3.²

Claim 1 is directed to a container, claim 10 is directed to a set of containers and claim 14 is directed to a jacket which comprises two half shells which are formed together out of a thin film material and which are hingedly connected to each other along a generatrix. The jacket is configured to be placed around a container containing a formulation. The jacket also has a transparency that causes different colored contents of the formulation to be indistinguishable based on color, while allowing undissolved particles within the container to be visible, when viewed through the jacket. An embodiment of the jacket, recited in independent form, is found in claim 14. A container having a correspondingly similar jacket is recited in claim 1 and a set of containers, each having similar jackets, is recited in claim 10.

¹ Claims 1-4 and 11-12 were rejected under 35 U.S.C. § 103(a) as being unpatentable by Cavanagh et al. (U.S. Patent No. 3,955,020). Claims 5, 14, 15, and 16 were rejected under 35 U.S.C. § 103(a) as being unpatentable by Cavanagh (U.S. Patent No. 3,955,920), in view of Norwood (U.S. Patent No. 4,281,520). Claims 6-8, 10, 13 and 17-19 were rejected under 35 U.S.C. § 103(a) as being unpatentable by Cavanagh (U.S. Patent No. 3,955,920), in view of Norwood (U.S. Patent No. 4,281,520), and further in view of Witkowski (U.S. Patent No. 5,525,383).

² Support for the hinge along the generatrix which directly connects to the two half shells includes the disclosure found on p. 3, ll. 24-28 of the Specification and Figures 2 and 3 (see element 8c in Figure 2). Support for the thin film used to manufacture the jacket is supported by at least the disclosure in lines 22-24 on page 3 in which a PVC film is used during a deep drawing process. This also supports the embodiment of claim 26. Support for claim 20, regarding the length of the generatrix (claim 20), as well as the neck and shoulder portions of the jacket (claims 21 and 25), is based on at least Figure 2. Support for claim 22, referencing the jacket being affixed to the container without the use of any adhesive between the jacket and the container is based on the disclosure on p. 4, ll. 1-14, which recite a first embodiment using tape and a second embodiment (lines 13-14) in which an adhesive is used. Claim 23, which discloses the use of a safety sealing tape that is colored, is supported by p. 4, ln 6.

As clarified during the interview, the cited references fail to render the claimed invention obvious. In particular, the cited references, even when considered in combination, fail to teach or suggest the use of a jacket or one or more container(s) having a jacket that comprises half shells that are formed together out of a thin film material and that are hingedly connected along a generatrix, and particularly when the generatrix defines a line along which a first edge of the first half shell and a first edge of the second half shell are maintained in direct contact, as recited in the claims, and particularly as recited in combination with the other claim elements.

In the latest Office Action, the independent claims were rejected in view of Cavanagh and Norwood. Some of the dependent claims were also rejected in view of Cavanagh, in view of Norwood and even further in view of Witkowski.³

Cavanagh discloses a glass container having a laminate plastic wrapper. This wrapper is very thin, somewhere between about 1 and 8 mils combined, with a first layer of about .75 to 5 mils and an outer layer that is “preferably as thin as possible” (about .5 to 3 mils). (Col. 4, ln. 68 thru Col. 5, ln. 25). The various layers of the laminate are attached to the bottle(s) with adhesives which help provide the desired characteristics of laminate, including resistance to breakage of the bottle(s) and the ability to display a graphic design in a desired manner. (Col. 5, ln. 15-Col. 6, ln. 35). Cavanagh was generally relied upon as disclosing a bottle covering that has a certain opacity.

Norwood, on the other hand, discloses a portable cooler comprising a pair of strapped hinges that connect two hollow modules that are filled with a liquid refrigerant and that are formed to fit around different sized beverage bottles. The Norwood reference was generally relied upon for the teachings of half shells that are configured to be closed about a bottle and for a hinge connection between the shells.

As discussed during the interview, there is no suitable motivation for combining the teachings of Norwood and Cavanagh. Furthermore, the disclosed teachings of Norwood would be impractical, if not impossible, to be used in combination with the Cavanagh plastic wrapper. For instance, the Norwood wrapper is a very thin wrapper (particularly the outer layer which is

³ Witkowski was generally cited for the proposition that tape can be used to hold a layer of material on a container. It is noted that Witkowski fails to compensate for the inadequacies of the Cavanagh and Norwood with regard to the independent claims. It is also noted that Witkowski also fails to teach some of the elements for which Witkowski was relied upon. By way of example, Witkowski fails to teach or suggest the use of a tape that is printed or written upon (claims 7, 18 and 19, see O.A. p. 6 #22). Instead, the relied upon disclosure in col. 4, ll.45-51 disclose an embodiment in which printing is applied directly to a cup surface, such that no tape is needed or presumptively used.

transparent and which has a graphic printed on its underside (see Col 5, ll. 15-18)). Such a thin layer would not be sufficient to mechanically couple and support the hinges of Norwood, let alone the weight of a beverage bottle (particularly if filled). The shell modules of Norwood are also hollow, configured to be filled with a refrigerant. These hollow, preformed shells, are impractical to be used as a replacement for, or in combination with, the thin plastic wrapper which is adhesively wrapped around the bottle in Cavanagh in such a manner as to enable the printed graphic design to be visible. In particular, Cavanagh requires that the outer laminate layer be wrapped around the entire bottle and sealed together with a lap seam. (Col. 6, ll. 4-21). The wrapping of the outer lamina about the entire bottle, even if it were possible, as well as the use of Cavanagh's adhesives to adhere the different layers of the laminate together, as well as to the bottle (Col. 5, ll. 34-42), clearly teaches away from the use of a hinge, such as Norwood's, which enables the modules to be conveniently reused and selectively fit around differently sized bottles. For instance, the spaces that occur between the different modules of Norwood's device, when it is used for the largest bottles, would hinder the graphic display properties provided by the Cavanagh configuration, and which, in some instances, preserves a space between the modules, even when they are in a closed state around the bottle. (Norwood, Col. 4, ll. 21-31, Fig. 6). The Cavanagh adhesives would also render Norwood's hinges irrelevant.

For at least the foregoing reasons, as well as the others articulated during the interview, it is respectfully submitted that it would not be obvious to modify Cavanagh in view of Norwood, as applied in the rejections of record. Furthermore, even if the teachings of Cavanagh and Norwood were combined, it is respectfully submitted that their combinations fail to teach or suggest the presently claimed embodiments. Among other things, for example, neither of these references discloses nor suggests a jacket having preformed half shells that are maintained in direct contact, along a generatrix, as generally claimed and shown in Figures 2 and 3 of the application, and as claimed in combination with the other recited claim elements. These references also fail to teach or suggest a jacket having preformed half shells formed from a thin film material, particularly as recited in combination with the other recited claim elements. For at least the foregoing reasons, Applicant respectfully submits that the independent claims should now be found allowable over the cited references and rejections of record, such that any of the remaining rejections and assertions made, particularly with respect to the dependent claims, do not need to be addressed individually at this time. It will be appreciated, however, that this

should not be construed as Applicant acquiescing to any of the purported teachings or assertions made in the last action regarding the cited art or the pending application, including any official notice, and particularly with regard to the dependent claims. In fact, to the contrary, many of the dependent claims even further distinguish the embodiments of the invention from the cited references, including the new claims which clarify embodiments in which the length of the generatrix is substantially the same as the entire length of the side of the container wall (claim 20), wherein the jacket also includes a preformed neck portion which protrudes away from the first and second half shells and away from the container bottom and which extends up around the entire container neck (claim 21), wherein the jacket is affixed to the container without the use of any adhesive between the jacket and the container (claim 22), wherein the safety sealing tape is a colored tape (claim 23), wherein the jacket and generatrix hinge are composed of a same material (claim 24), wherein the first and second half shell of the jacket each comprise a preformed side wall, neck portion, and preformed shoulder portion, wherein the shoulder portion arcuately extends between and connects the preformed neck portion and the preformed side wall (claim 25), and wherein the jacket is preformed during a deep drawing process out of a plastic film (claim 26).

In the event there remains any impediment to allowance of the claims which could be clarified in a telephonic interview, the Examiner is respectfully requested to initiate such an interview with the undersigned.

Dated this 15th day of March 2010.

Respectfully submitted,

/Scott A. Woodbury/ Reg. #55743

SCOTT A. WOODBURY

Registration No. 55,743

JENS C. JENKINS

Registration No. 44,803

DANA L. TANGREN

Registration No. 37,246

Attorneys for Applicant

Customer No. 022913

Telephone No. 801.533.9800

SAW:cad